



MEMORANDUM

Agenda Item 1(I)1

TO: Honorable Chairwoman Rebeca Sosa, and
Members, Board of County Commissioners

DATE: October 22, 2013

FROM: Honorable Harvey Ruvin, Clerk
Circuit and County Courts

SUBJECT: Conflict Waiver Request
Albert A. del Castillo, Shareholder
Greenberg Traurig P.A.

Christopher Agrippa, Division Chief
Clerk of the Board Division

Pursuant to the provisions of Resolution R-1017-10, adopted at the October 5, 2010, Miami-Dade County Board of County Commissioners' meeting, the attached Conflict Waiver Request received from Albert A. del Castillo, Shareholder, Greenberg Traurig, P.A., for GT's concurrent representation of Nopetro in connection with Compressed Natural Gas Programs for Miami-Dade County's Heavy Diesel Fleet; and of Miami-Dade County in unrelated matters, is presented for the Board's consideration.

The report and recommendation of the staff of the Commission on Ethics and Public Trust and Mr. Albert A. del Castillo's letter dated July 23, 2013, are attached for your information.

CA/fcd
Attachments

AGENDA ITEM COVER MEMO

To: Miami-Dade County Board of County Commissioners

Date: October 7, 2013

From: Michael P. Murawski 
Advocate for the Commission on Ethics and Public Trust

Re: Conflict waiver Request/Greenberg, Traurig, P.A.

Pursuant to the provisions of Resolution R-632-10, the attached Conflict Waiver Request received from the law firm of Greenberg, Traurig, is being presented for the Board's consideration.

The report and recommendation of the staff of the Commission on Ethics and Public Trust is being submitted as a supplement to this item.

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**Commission on Ethics &
Public Trust**
Miami-Dade County

Memorandum

To: Miami Dade County Board of County Commissioners
Date: October 7, 2013

From: Michael P. Murawski, Advocate *MPM*
Commission on Ethics and Public Trust

Re: Greenberg, Traurig/Nopetro Conflict Waiver Request

COE No.: K13- 121

Background:

On July 23, 2013, Albert A. del Castillo, Esq., a member of and shareholder in the law firm of Greenberg Traurig P.A. (GT), wrote to Clerk of the Court, Harvey Ruvin, to request a conflict waiver pursuant to County Resolution R-632-10. The waiver was requested in order for GT to potentially represent Nopetro Miami LLC (Nopetro) in connection with its bid to provide design, construction, operation, maintenance and financing of a Compressed Natural Gas Program (the Program) for the County's heavy diesel fleet.

GT currently serves as one of the County's Federal Government Lobbyists under County contract Q74a.

The Miami-Dade Commission on Ethics & Public Trust (COE) has been requested to conduct a review of the GT Conflict Waiver request.

Investigation:

The COE conducted a fact finding inquiry which included:

- Review GT's conflict waiver request letter dated 7/23/2013
- Discussion with Intergovernmental Affairs Director, Joe Rasco, who oversees contract Q74a.
- Discussion with GT attorney Albert A. del Castillo

- Discussion with Miriam Singer, Assistant Director ISD Procurement

- Review of database searches of Nopetro.

The COE determined the following:

1. Nopetro Miami LLC is a Florida Limited Liability Company with its principal place of business at Coral Gables, Florida. Nopetro Miami LLC is a wholly owned subsidiary of Nopetro CH4 Holdings LLC, also a Florida Limited Liability Company with its principal place of business in Coral Gables, Florida. Nopetro also maintains an office in Tallahassee, Florida.
2. Nopetro designs, builds, owns, operates, and maintains compressed natural gas (CNG) and liquefied natural gas (LNG) fueling stations throughout the Southeast for medium and heavy-duty vehicles.
3. Nopetro provides infrastructure allowing private companies and public sector entities to lower their diesel fuel costs by as much as 40% by transitioning to natural gas.
4. The County is in the preliminary stages of preparing to issue an RFP which will request proposals for the design, construction, operation, and maintenance of CNG facilities.
5. The County has not yet advertised the RFP. GT has assured that they will only represent Nopetro if they are selected as the preferred vendor and in no event will they represent Nopetro in any litigation against the County.

Conclusion

Pursuant to County Ordinance No.00-64, “no person or entity that received compensation from the County for lobbying on behalf of the County or any of its agencies or instrumentalities at either the state, national or municipal level shall represent any entity in any forum to support a position in opposition to a position of the County unless the Board grants a specific waiver for a specific lobbying activity.”

Additionally, County Resolution No. 56-10 requires all County contract lobbyists to obtain a waiver from the Board for any actual or perceived conflicts of interest.

There is no evidence that GT’s proposed representation of Nopetro currently is in opposition to or conflicts with any interest or position of the County. GT maintains that their representation of Nopetro will not conflict with or in any way diminish them from fulfilling their obligations to the County under contract Q74a.

The Office of Intergovernmental Affairs did not voice any opposition to the granting of a conflict waiver in this matter.

The COE inquiry did not uncover any reason to deny GT a conflict waiver, however, GT is reminded of its continuing affirmative duty to promptly bring to the County's attention any future actual or perceived conflict that may arise.



Albert A. del Castillo
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July 23, 2013

The Honorable Harvey Ruvín
Clerk of the Board of County Commissioners
Miami-Dade County
111 N.W. 1st Street
Miami, Florida 33131

Mr. Jorge Herrera
Chief Executive Officer
Nopetro-Miami LLC
2625 Ponce de Leon
Coral Gables, Florida 33134

Re: Conflict waiver for GT's concurrent representation of Nopetro in connection with Compressed Natural Gas Program for Miami-Dade County's Heavy Diesel Fleet; and of Miami-Dade County in unrelated matters

Dear Messrs. Ruvín and Herrera:

Miami-Dade County (the "County") has announced that it expects to issue a request for proposals for the design, construction, operation, maintenance and financing of a Compressed Natural Gas Program (the "Program") for the County's heavy diesel fleet (the "RFP"). Nopetro-Miami LLC ("Nopetro") intends to submit a response to the RFP. In the event that the County selects Nopetro as the preferred vendor under the RFP, Nopetro would like to retain Greenberg Traurig, P.A. ("GT") as its legal counsel for the ensuing negotiations, drafting of documents and other transaction-related activity necessary to implement Nopetro's response to the RFP (the "Transaction").

The purpose of this letter is to formally request a conflict-of-interest waiver from the County and Nopetro in connection with GT's proposed representation of Nopetro in the Transaction. This conflict waiver is being sought before the County's release of the RFP and any formal award thereunder in order to avoid the time delay that would result if the process were not commenced until the County's selection of its preferred vendor. If the County and Nopetro grant this waiver, the waiver will become effective *only if* the County actually selects Nopetro as its preferred vendor under the RFP. It is hereby acknowledged and understood by Nopetro and GT that if the County grants the waiver at this time, the County in no manner

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The Honorable Harvey Ruvin
Mr. Jorge Herrera
July 23, 2013
Page 2

whatsoever is making any representation to Nopetro, GT or any other party that: (i) the County actually will issue the RFP or (ii) if the RFP is issued, Nopetro will be selected as the preferred vendor thereunder. If the County does not issue the RFP or if Nopetro is not selected by the County as the preferred vendor thereunder, then the waiver, if previously granted by the County, will be of no force or effect.

GT has served and acted (and may in the future serve and act) as legal counsel to the County in various capacities which, at present, includes serving as Federal Government Lobbyist pursuant to Contract No. Q74a, dated February 6, 2006 (the "County Matters"). Nopetro would like to hire GT to represent it in connection with the Transaction. Accordingly, GT hereby respectfully requests that the County and Nopetro execute this conflict of interest waiver according to the terms set forth below.

If GT were to undertake the representation of Nopetro in the Transaction, our Firm's concurrent representations of Nopetro adverse to the County in the Transaction, and of the County in the County Matters would create a conflict of interest under the Florida Rules of Professional Conduct (the "Ethics Rules") because it would involve GT representing one current client (Nopetro) adverse to another current client (County).

Under the Ethics Rules, we would be precluded from representing Nopetro in the Transaction unless both Nopetro and the County waived the conflict of interest. Such a conflict of interest is waivable only if: (i) the conflict is fully disclosed to the parties; (ii) our exercise of independent professional judgment in the proposed representation of one client will not be materially limited by our responsibilities to the other client; (iii) we reasonably believe that our representation will not be adversely affected by the conflict; and (iv) our representation does not violate any other ethical requirements, such as the attorney's duty of confidentiality to each client.

GT has examined the representations and concluded that our representation of Nopetro adverse to the County in the Transaction will not be adversely affected by our representation of the County in the County Matters; nor will our representation of the County in the County Matters be adversely affected by our representation of Nopetro in the Transaction. Similarly, our duty of confidentiality to Nopetro in the Transaction will not be breached by our representation of the County in the County Matters; nor will our duty of confidentiality to the County in the County Matters be breached by our representation of Nopetro in the Transaction. Thus, in our opinion, the conflict of interest described above is waivable.

GT has agreed to undertake the representation of Nopetro in the Transaction with the express consent and agreement of both Nopetro and the County and our mutual understanding and agreement as follows:

The Honorable Harvey Ruvin
Mr. Jorge Herrera
July 23, 2013
Page 3

1. Nopetro agrees that GT may continue to represent the County (and/or its agencies) on any and all matters other than in connection with the Transaction and related matters and waives any objection or potential conflict with respect to such representation.
2. Nopetro has not been required to select GT as its attorneys as a prerequisite of any type.
3. The County consents to GT's representation of Nopetro in the Transaction and related matters and waives any objection or potential conflict with respect to such representation.
4. GT agrees that its representation of Nopetro will not involve any challenge to the authority of the Board of County Commissioners ("Board"), any Board policy or any facial challenge to the constitutionality or legality of any County Code provision.
5. Additionally, GT agrees that if the Transaction were to involve litigation between Nopetro and the County, GT would not represent either party against the other in connection with such litigation.

Please indicate your agreement and consent to the foregoing by signing the enclosed copy of this letter as indicated and returning it to my attention. A facsimile copy of this letter and all signatures shall be considered as originals for all purposes.

Sincerely,

GREENBERG TRAURIG, P.A.

By: Albert A. del Castillo
Albert A. del Castillo, Shareholder

AAdC/njc

cc: Robert A. Cuevas, Jr., Esq., County Attorney
Joseph Rasco, Director of Intergovernmental Affairs
Gerald T. Heffernan, Esq., Assistant County Attorney